Scotts Investments (Singapore) Pte Ltd (in compulsory liquidation) v Jumabhoy Ameerali R and Others
[2004] SGHC 20

Case Number : Suit 736/2002

Decision Date : 05 February 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Harish Kumar and Linda Ong (Engelin Teh Practice LLC) for plaintiff; Tan Bar Tien and Winston Quek (BT Tan and Co) for the third defendant

Parties : Scotts Investments (Singapore) Pte Ltd (in compulsory liquidation) — Jumabhoy Ameerali R; Iqbal Jumabhoy; Rafiq Jumabhoy

Companies – Directors – Remuneration – Where a board resolution stated that director was to be paid all costs and expenses incurred, whether that included payment of his fees on time costs or on a quantum meruit basis – Whether director had discharged his burden of proving meaning of the words in board resolution entitling him to costs and expenses.

Words and Phrases – 'Costs and expenses' – Whether the ordinary dictionary meaning of words was helpful – Whether words had to be construed in their context.

1 This action before me concerned the counterclaim of Rafiq Jumabhoy, who was the third defendant in the action brought by the liquidators of Scotts Investments (Singapore) Pte Ltd ("SIS") against Ameerali R Jumabhoy, Iqbal Jumabhoy, and Rafiq Jumabhoy. The liquidators' claim had been discontinued. Rafiq Jumabhoy's claim here was for payment of his fees based on his time costs, or alternatively, payment on a *quantum meruit* basis; and secondly, for costs and expenses incurred by him on behalf of SIS, including the legal fees of various law firms.

2 Rafiq Jumabhoy's claim was based solely on the ground that the board of directors of SIS had passed resolutions and issued letters of indemnities to that effect. The facts were not complicated but some necessary references had to be made to the history of the Jumabhoy family dispute that began publicly in 1995 in Suit No 1801 of 1995. In that action, Rajabali Jumabhoy together with two of his sons, Yusuf and Mustafa, sued his other son, Ameerali (the father of Rafiq Jumabhoy), Iqbal Jumabhoy (Rafiq's brother) and Rafiq Jumabhoy himself. A side issue concerning an alleged share option in favour of Rafiq Jumabhoy turned him against his brother, Iqbal. Rafiq Jumabhoy subsequently switched allegiance in the family dispute to the Rajabali-Mustafa-Yusuf camp and, Ameerali and Iqbal brought an application to put SIS under receivership. That application was filed on 12 April 1996. That might have consequently worsened the financial problems of SIS, when its creditor-banks became, understandably, even more nervous. SIS was only a holding company which held shares in Scotts Holdings Ltd and various subsidiary companies such as Lion City Holdings Pte Ltd. Thus, with no trading or any substantial or active business, it had long not required a manager or managing director. However, because of the family dispute in court and with creditors making demands, action was needed.

3 Yusuf Jumabhoy and Rafiq Jumabhoy were authorised by board resolutions of 27 July 1996 and 6 August 1996 to take appropriate action to preserve the company. The two resolutions were identical in wording except that they concerned two different companies. One referred to Lion City Holdings Pte Ltd ("LCH") and the other to Scotts Holdings Ltd. The relevant portions of the wording of the resolution is important and I set it out in full:

> IT WAS RESOLVED THAT

without prejudice to their respective rights and the rights of the other plaintiffs and/or defendants under the various suits which have been filed and further reserving the rights of some of the Company [SIS] directors challenging the legality of the investment in LCH and the guarantees provided to LCH by the Company pursuant to Article 112 of the Articles of Association of the Company Mr Yusuf Jumabhoy and Mr Rafiq Jumabhoy be appointed from among the directors of the Company to review the Company's investment in LCH to determine the steps (if any) to be taken by the Company to safeguard the Company's investment in LCH and all amounts owing to the Company or guaranteed by Company for the debts of LCH and to exercise all the powers of the Board in connection therewith and all things incidental thereto including without limitation:

(a) deciding all questions, taking all steps required and approving all matters to give effect to such steps as they may agree to take *vis-à-vis* LCH pursuant to their review;

(b) obtaining such reports or other data as they may deem necessary to assist them in their review and in determining the steps to be taken *vis-à-vis* LCH;

(c) instructing M/s Rajah & Tann as solicitors for the Company, and any other professional advisers (including auditors) or any third party on all matters relating to LCH and to settle the terms of their appointment; and

(d) exercising all discretion and doing all acts and things necessary or expedient to give effect to all matters referred to in this resolution,

and the Company shall indemnify Mr Yusuf Jumabhoy and Mr Rafiq Jumabhoy for all costs and expenses incurred by them (or each of them) personally in respect of their appointment.

That M/s Rajah & Tann be appointed as the Company's solicitors to act for the Company in relation to all matters regarding LCH and that they be entitled to take instructions from Mr Yusuf Jumabhoy and/or Mr Rafiq Jumabhoy in relation to all such matters.

4 Rafiq Jumabhoy claimed payment for his "time costs" involved in working for the board pursuant to the above resolutions. Although there was no evidence of what his time costs were, he suggested in his evidence-in-chief that the court should award him a sum of $916,275 being the total time cost at the rate of $2,850 a day. He averred that this sum was reasonable because it was between that charged by one Don Ho ($3,200) and one Andrew Smith (of Haddington Investment Pte Ltd) who charged $2,500 a day. These were two professional consultants engaged to help SIS before Rafiq Jumabhoy and Yusuf Jumabhoy took over under the said resolutions. Rafiq Jumabhoy also claimed $161,934.68 being legal costs paid by him as well as $2,100 for travelling expenses.

5 As I had mentioned, Rafiq Jumabhoy's claims were based on the above said resolutions and indemnities and nothing more. In support of his claim, however, he produced a letter dated 14 May 1996 which he wrote to Yusuf Jumabhoy (not to the board of SIS). In that letter he offered his services to SIS and asked for a fixed monthly pay of $25,000. There was no written reply to that letter but Rafiq Jumabhoy claimed that he spoke to Yusuf Jumabhoy about it over the telephone and that Yusuf had agreed to the terms of that letter. Consequently, he alleged, the resolutions were based on those terms. Yusuf Jumabhoy's evidence in court was that Rafiq did call but he (Yusuf) had told him that the letter of 14 May 1996 was "nonsense". I am inclined to accept Yusuf Jumabhoy's version. The rest of the evidence supported Yusuf Jumabhoy's version. First, no mention was made in the resolution to either the letter of 14 May 1996, or the specific terms such as payment of $25,000

a month to Rafiq Jumabhoy. Secondly, if the resolutions were passed on the basis of that letter, why would the board agree to change the payment terms from a fixed sum of $25,000 to a non-specified rate of time-costs (which Rafiq Jumabhoy had said might work out to even more than $25,000)? Thirdly, a further letter written by Rafiq Jumabhoy dated 18 May 1996 to Yusuf Jumabhoy was produced in which Rafiq Jumabhoy referred to his conversation with Andrew Smith where he told Andrew Smith that he was still awaiting a response from Yusuf Jumabhoy to his earlier (14 May 1996) letter.

6 Mr Tan Bar Tien, counsel for Rafiq Jumabhoy, referred me to various dictionaries (including *Black's Law Dictionary*, *The New Shorter Oxford English Dictionary*, and *The Law Lexicon*) in the hope of persuading me that the words "costs" as well as "expenses" are wide enough to include payment of time charges for services rendered. Dictionary meanings of common words are always helpful, but when a document is being challenged in court as to what the words in it mean, the general and wide ambit of dictionary meanings can be misleading instead of enlightening. In a wide, literary, and even economic, sense, Rafiq Jumabhoy's time can, of course, be valuable and thus amount to a "cost" to himself being time spent doing work for someone else. But we are here construing words from documents in order to establish legal rights, obligations, and liabilities. The issue was whether Rafiq Jumabhoy, a director of SIS, was entitled to be paid for his services rendered to SIS (during the relevant time) on a proper construction of the board resolutions and letters of indemnities.

7 Words derive their meaning specifically from their context. In this case, the context extended beyond the resolutions themselves, and must include the circumstances of the company at the time. The key fact that neither party disputed was that SIS was in financial difficulties. It might have assets but how much and how quickly they could have been realised was complicated and uncertain. The family was at war within itself and even Rafiq Jumabhoy could not count on a majority support in all matters concerning the company. The simple question was, "Should Rafiq Jumabhoy be paid $25,000 a month or his time costs (which might be more than $25,000 a month)?" Had that question been put directly to the board (as it should have), I doubt that the board would have agreed without debate. Nothing of that kind, whether the proposition, debate or resolution, was in evidence. The words "costs and expenses" in the context of indemnifying a company director delegated to perform specific tasks by the board, ordinarily means that the director would be covered for all out-of-pocket expenses. It would not include a director's remuneration which must be specifically approved by the board. See *In re Richmond Gate Property Co Ltd* [1965] 1 WLR 335. That case was also authority for the proposition that a director is not entitled to a *quantum meruit* payment. The common dictionaries may not have all these qualifications because such details are matters of company law. The burden of proving that the directors had discussed the unusual meaning that Rafiq Jumabhoy wanted me to find was, of course, on Rafiq Jumabhoy. Not only Yusuf Jumabhoy, but also the wording of the resolutions, contradict Rafiq's interpretation. He could, of course, have summoned the other members to verify his position but he did not. The resolution of 27 July 1996 in this present case was passed with eight persons in attendance, including Philip Loong, the company secretary, and one other person who was not a member of the Jumabhoy family. The resolution of 6 August 1996 was passed with seven persons in attendance. It could be that they were not likely to be enthusiastic about it, but the fact remains that they were material witnesses; and one must assume that they will tell the truth. However, should they turn hostile, the party calling them is entitled to apply to cross-examine them. But by not calling them at all, the party who required them runs the risk that the court may not be satisfied that the burden of proof had been discharged. That was indeed the case here. Apart from Rafiq Jumabhoy's own account which was directly refuted by Yusuf Jumabhoy, there was no other evidence remaining in his favour. The thrust of Mr Tan's submission lay in reliance on dictionaries and a couple of cases that were not relevant. *Maritime Services Board of New South Wales v Posiden Navigation Incorporated* [1982] 1 NSWLR 72, for example, concerned the payment of compensation

arising out of a statutory liability, namely the Prevention of Oil Pollution of Navigable Waters Act, 1960 (New South Wales).

8 Weighing all the evidence and taking the circumstances and context into account, I am not satisfied that Rafiq Jumabhoy had sufficiently discharged the burden of proof on him. His claim for payment of his time costs was, therefore, dismissed. However, as I had alluded to them earlier, the words "costs and expenses" clearly meant that he would be reimbursed if he had incurred any out-of-pocket expenses on behalf of SIS. I, therefore, ordered an inquiry to determine if any such costs and expenses had, in fact, been incurred.

9 The third defendant's counterclaim was therefore dismissed save for the inquiry as to out-of-pocket expenses paid on behalf of SIS.

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